



Section-by-Section Summary of H.R. 4754, the *Emergency Financial Manager Reform Act of 2016*

Section 1. Short Title. Sets forth the short title of the bill as the “Emergency Financial Manager Reform Act of 2016.”

Section 2. Findings. Sets forth seven congressional findings explaining why this legislation is necessary.

Section 3. Safeguards Regarding State Appointment of an Emergency Financial Manager. Subsection (a) authorizes the Attorney General to withhold five percent of funds that would otherwise be allocated to a state under the Byrne-JAG grant program if the state has appointed an emergency financial manager and any one of the following seven criteria are not complied with:

- (1) **Protection Against Discriminatory Impact on Voting** – The emergency financial manager is appointed and the state did not prior thereto submit a certification to the Attorney General (and every 18 months after such appointment if the tenure of the emergency financial manager continues beyond such period) stating that the appointment: (A) has neither the purpose nor the effect of denying, abridging, or diluting the right to vote on account of race or color; and (B) the community for which the emergency financial manager is sought to be appointed had an opportunity to comment on the impact of such appointment. (This language is based on the pre-clearance requirements of the Voting Rights Act, and is needed because, for example, in Michigan the appointment of emergency financial managers has had a significant negative impact on minority communities, with more than half of the state’s black population subject to governance by emergency financial managers since 2009.)
- (2) **Protection Against Ignoring Public Comment on Possible Adverse Impact on Voting** – The emergency financial manager is appointed and the Attorney General, after having been provided complete copies of all public comments submitted in response to the notice required above, has interposed an objection to such appointment. (This ensures that the Attorney General has the benefit of public comments on the proposed appointment so that he or she can make an informed determination as to whether it has an adverse impact on voting rights.)
- (3) **Protection Against Harm to Public Health and Safety** – The emergency financial manager is authorized to make decisions affecting public health or safety, including the disbursement of any emergency funds provided by any federal or state entity for the purpose of addressing lead or other contamination of drinking water in a public water system, without receiving prior approval from the governor and local elected officials. (This is necessary due to dangerous and unaccountable decisions made by unelected emergency financial managers in Flint and the Detroit Public Schools, among other places.)

- (4) **Protections Against Conflicts of Interest, Mismanagement, and Abuse of Discretion** – The emergency financial manager fails to have adequate oversight to ensure against conflicts of interest, mismanagement, and abuse of discretion. (This is necessary because numerous instances of abuse, conflict of interest, and mismanagement by emergency financial managers have come to light. For example, in Pontiac, Michigan emergency financial managers incurred a potential loss of \$1.4 million in U.S. Department of Housing and Urban Development funding due to mismanagement of grants and in Highland Park, Michigan the emergency financial manager made more than \$200,000 in unauthorized payments to himself.)
- (5) **Protection Against Rejection of Collective Bargaining Agreements** – The emergency financial manager is authorized to reject, modify, or terminate a collective bargaining agreement without mutual consent of the parties. (This is necessary to insure that local government workers who have worked for years and been promised pensions – in many cases guaranteed by the State Constitution – are not forced to forego those savings due to an arbitrary decision by an unelected emergency financial manager.)
- (6) **Protection Against Unilateral Rejection of Other Contracts** – The emergency financial manager is authorized to reject, modify, or terminate a contract without mutual consent of all parties or unless such rejection, modification, or termination is approved by a federal bankruptcy court. (This is necessary because the Contracts Clause of the Constitution provides that “No State shall ... pass any ... Law impairing the Obligation of Contracts.”)
- (7) **Protection Against the Failure to Allow for Public Comment or Provide Process for Possible Complaints** – This section is intended to ensure that the public – before an emergency financial manager is appointed – is provided notice and the opportunity to comment on whether the appointee has any conflicts of interest, whether he or she has the requisite experience and financial acumen, and whether the appointee is empowered to propose possible sources of financial assistance. The public must also be given the name of a state official designated to receive complaints from the public about the appointee’s conflicts of interest, mismanagement, or dereliction of duty. (This is necessary to ensure that those most effected by the appointment of an emergency financial manager have had the opportunity to identify critical problems with the proposed appointee and that there is a process for filing possible complaints about the appointee.)

Subsection (b) provides that the amount of funding not allocated under subsection (a) is to be reallocated directly to the local government unit for which the emergency financial manager is appointed. There are several current laws that condition the receipt of Byrne-JAG funding upon states meeting certain requirements, including the Death in Custody Reporting Act of 2013, the Adam Walsh Child Protection Safety Act of 2006, the NICS Improvement Amendments Act of 2007, and the Prison Rape Elimination Act of 2003.

Section 4. Definitions -- Defines various terms used in the bill.